IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8855 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVESH RAMESHCHANDRA SHAH

Versus

REGIONAL TRANSPORT OFFICER

Appearance:

1. Special Civil Application No. 8855 of 2001

MR JV JAPEE for Petitioner No. 1

MR UR BHATT, AGP, for Respondents No. 1-2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr UR Bhatt learned AGP waives service of Rule for the respondents. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. The petitioner is the owner of a bus bearing registration No. GJ-1-V-9839. For the purpose of purchasing the said vehicle, the petitioner had taken a loan from Talod Nagrik Cooperative Bank Ltd., Talod, Dist. Sabarkantha. The Bank's dues were not paid and, therefore, the Bank exercising its right under the loan agreement seized the vehicle on 1-9-1997. The Bank has kept the said vehicle in its godown since then. In this petition, the petitioner has challenged the recovery sought to be made by the Regional Transport Officer, Sabarkantha District of Himmatnagar in respect of arrears of the motor vehicles tax for the said vehicle.

3. At the hearing of this petition, Mr Japee learned counsel for the petitioner has relied on the letter dated 15-7-2001 from the Manager of the Talod Nagrik Cooperative Bank Ltd.to the Regional Transport Officer, Himmatnagar stating that the vehicle was detained by the Bank and kept in the Bank's compound. The Bank also requested the Regional Transport Officer to exempt the petitioner from tax liability for the period of nonuse from 1-5-2000 onwards, as exemption for non-user was already granted for the prior period.

The RTO, Himmatnagar had accordingly made a proposal to the Transport Commissioner on 16-6-2001 (Annexure E) pointing out the aforesaid facts. The RTO had also pointed out that the vehicle was converted into goods body from 1-12-1999 onwards. Hence, the RTO, apart from seeking approval for granting the nonuse permission, also requested the Transport Commissioner to sanction the nonuse of the bus as a goods vehicle from 1-12-1999 onwards. Since the Transport Commissioner has rejected that application, the petitioner has approached this Court.

4. Mr JV Japee learned counsel for the petitioner submits that the question about the Transport Commissioner not granting the sanction for converting the passenger vehicle into a goods vehicle is a separate issue and is not connected with the tax liability of the petitioner and, therefore, he will pursue that issue in a separate petition before the learned Single Judge of this Court and that this petition is confined to the dispute about the tax liability of the petitioner.

5. Mr Bhatt for the respondents submit that the petitioner has an equally efficacious remedy before the State Government under sec. 14A of the Bombay Motor Vehicles Tax on Passengers Act, 1958.

6. Having heard the learned counsel for the parties and having regard to the order dated July 17, 2000 passed by this Court in Special Civil Application No.571 of 1999, we see no reason why a similar order should not be passed in the facts of the instant case and accordingly the petition is disposed of in terms of the following directions:

(i) Since the vehicle in question bearing registration No. GJ-1-V-9839 has been in the custody of the Talod Nagrik Cooperative Bank Ltd., Talod, Dist. Sabarkantha since 1-9-1997, the respondents shall not make any recovery of vehicle tax for the period from 1-9-1997 till the vehicle remains in the custody and compound of the said Bank.

(ii) The Talod Nagrik Cooperative Bank Ltd. Talod, shall be entitled to sell off the aforesaid vehicle for recovering of its loan dues and the purchaser shall not be liable to pay any motor vehicle tax on the aforesaid vehicle from 1-9-1997 till the date on which the vehicle is delivered by the Bank to the purchaser.

(iii) The aforesaid arrangement shall not come in the way of the aforesaid Bank recovering its balance dues from the petitioner.

7. The petition is accordingly allowed in terms of the aforesaid directions without prejudice to the petitioner's right to pursue his remedy for challenging the order of the Transport Commissioner refusing to grant sanction for conversion of the vehicle into a goods vehicle.

8. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.S. Shah,J) (D.A. Mehta,J)

zgs/-